

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6502

Joint Petition of GE Capital Communications Services )  
Corporation and GE Capital Telemanagement Services )  
Corporation for Approval of a Corporate Reorganization )  
and Related Transactions )

Order entered: 6/19/2001

**I. INTRODUCTION**

This case involves a joint petition filed on April 9, 2001, by GE Capital Communications Services Corporation ("GECCS") and GE Capital Telemanagement Services Corporation ("GECTS") (collectively the "Petitioners"), seeking Vermont Public Service Board ("Board") approval under 30 V.S.A. §§ 107, 109, and 231 for the merger of GECCS with and into its wholly-owned subsidiary: GECTS. As a result of the transaction, GECCS will cease to exist which will, in turn, necessitate the revocation of GECCS's Certificate of Public Good ("CPG") and issuance of a CPG to GECTS.

On May 29, 2001, the Vermont Department of Public Service ("Department") submitted a letter to the Board indicating that the Department had no objection to the merger of GECCS with and into GECTS or the revocation of GECCS's CPG. The Department noted that the transaction will not cause inconvenience or confusion to Vermont consumers of GECCS's services. Further, the Department also had no objection to the issuance of an order without hearing or further investigation, as provided under 30 V.S.A. § 107. The Department also recommends that the Board issue a CPG to GECTS in addition to approving the merger and revoking GECCS's CPG, without the need for suspension, investigation, or hearings.

**II. FINDINGS OF FACT**

Based upon the joint petition and accompanying documents, the Board makes the following findings of fact.

1. GECCS is a Georgia corporation with principal offices located at Atlanta, Georgia. GECCS is authorized to provide resold telecommunications services in several states including Vermont. GECCS was issued CPG No. 139 by the Board on June 15, 1994. Petition at 2.

2. GECTS, also a Georgia corporation, is a wholly-owned subsidiary of GECCS and is not currently authorized to provide telecommunications services in any state. Petition at 2.

3. GECTS has all the necessary authority to transact business in Vermont. Letter and Attachments, filed 6/12/01.

4. Through means of an intracorporate merger of GECCS with and into GECTS, with GECTS surviving the merger, GECTS will assume GECCS's operations and provide telecommunications services to GECCS's customers in Vermont under an identical tariff. As a result of the merger, the separate existence of GECCS will cease. Petition at 4.

5. Because GECTS will, following the merger, offer the same services and rates to previous customers of GECCS under a similar name, the merger of GECCS with and into GECTS should be transparent to Vermont consumers. Petition at 4.

6. GECTS has provided the necessary documentation regarding management structure and financial information. Attachments to Petition.

7. Completion of the merger described herein serves the public interest in promoting competition among providers of local and interexchange telecommunications services. The merger should result in a company better equipped to accelerate its growth as a competitive telecommunications service provider by combining the telecommunications expertise and resources of Petitioners. The resulting simplified corporate structure should enhance GECTS's operational flexibility and efficiency. These enhancements will directly benefit Vermont consumers. The merger, therefore, will ensure the continued provision of advanced telecommunications services to the public and should promote competition in the Vermont telecommunications service market. Petition at 5.

### **III. CONCLUSIONS OF LAW AND DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109 and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). The statutes also condition approval of a merger upon a finding that the merger will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting

securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a company." 30 V.S.A. § 107(c)(1).<sup>1</sup> In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the joint petition of GECCS and GECTS, we conclude that 30 V.S.A. § 107 applies because the merger involves the transfer of controlling interest of GECCS into the control of GECTS, and thus results in the transfer of more than ten percent of the shares of GECCS to another company. We further conclude that the merger will allow GECTS to operate more efficiently in the current telecommunications marketplace. The reorganization, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 107, 109 and 311, and should be approved.

Sections 102 and 231 of Title 30, V.S.A., require that a CPG be issued before a company can offer telephone service to the public in Vermont. Such entry regulation statutes were traditionally designed for two purposes. The first is to protect consumers against incompetent or dishonest businesses. The second was to protect existing providers by limiting or eliminating their competitors. See, e.g., Docket No. 5012, *Petition of Burlington Telephone Company*, Order of 5/27/86.

The first rationale for entry regulation -- "consumer protection" -- remains one of the Board's policy objectives. Having reviewed the petition of GECTS and all related materials, the Board concludes that the evidence does not demonstrate that the technical, managerial and financial resources are inadequate. When combined with alternatives available in a competitive marketplace and recognizing that consumers are free to use another competitor's services with minimal transaction cost, we conclude that concerns for consumer protection have been sufficiently addressed. Concerns for consumer protection are, therefore, not cause for rejection of GECTS's petition nor do they warrant an investigation at this time.

The second -- or "franchise protection" -- rationale was rejected by the Board, after careful consideration in Docket No. 4946. In that Docket's Order of February 21, 1986, the Board concluded that, despite all its dangers and inherent drawbacks, the public benefits of

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1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

competition outweighed any flaws, and that competition should be permitted in Vermont's markets for message telephone service and other communications services.

Vermont policy, established by the Board and enunciated through the State Telecommunications Plan ("Plan") (adopted by the Department), has firmly supported opening the local exchange market to competition. This policy has been reaffirmed by the Board in Docket 5713, the Board's investigation into competition in the telecommunications arena and Docket 5909, in which the Board authorized Hyperion Telecommunications of Vermont, Inc. ("Hyperion") to provide local exchange competition.<sup>2</sup>

The Board's support for competitive entry is consistent with the state's telecommunications policies as set out in the State Telecommunications Plan. That Plan clearly states that competition is the preferred strategy to achieve Vermont's goals of reasonable price, availability and high quality of service provided that there is adequate assurance that the needs of all consumers will be met. The Plan also encourages the Board to create a "framework to facilitate competition, while assuring affordable basic service rates, high quality of service, consumer protection, and universal service via interconnection agreements and Docket No. 5713 investigation and decisions."<sup>3</sup> The Board has moved to establish such a framework in various rulings over the last several years.

Federal law also applies to the broader questions of competitive entry. Under Section 253(a) of the Telecommunications Act of 1996 ("Act") which amended the Communications Act of 1934, states may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." States retain authority, however, to:

impose, on a competitively neutral basis and consistent with Section 254 [47 U.S.C.A. § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.<sup>4</sup>

Thus, federal law makes clear that states cannot bar competitive entry. State commissions may still require new service providers to obtain franchises (or, in Vermont, CPGs), although they may

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2. Docket 5713, Order of 5/29/96 at 13 (later stages of that proceeding will further define the framework for telecommunications competition within the state); Docket 5909, Order of 1/14/97.

3. Vermont Telecommunications Plan (dated December 1996) at iii.

4. 47 U.S.C.A. § 253(b).

not use that authority to prohibit all competitive entry.<sup>5</sup> Vermont also may continue to impose competitively neutral conditions to achieve the purposes enunciated in Section 253(b).

At the present time, however, the Board has not fully investigated the conditions that should apply to entry into local exchange competition. In Docket 5909, the Board concluded that, in general, conditions related to competitive entry could be deferred to Docket 5713 (and its successor dockets). In Docket 5909, the Board included a specific condition in Hyperion's CPG making clear that Hyperion must comply with any conditions related to competitive entry imposed in subsequent Board proceedings. The Board sees no reason to deviate from that policy here and recommends inclusion of a similar provision in GECTS's CPG.

GECTS should also be aware of the Board's policy regarding the provision of operator services, should GECTS, in the future choose to offer these services. As a substantive matter, the Board has previously found that, for carriers such as GECTS that do not possess market power, there is little need for cost-of-service or rate-of-return regulation in order to meet the statutory criterion of just and reasonable rates. There is an exception regarding regulation of rates, however, with respect to rates for operator services. In our Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Operator Service Providers in Vermont, we noted that "customers who are not expert in the rapidly changing field of telecommunications . . . stand to be taken advantage of in an imperfect market, where rates are unregulated, may be extraordinarily high and may be incurred by the end user without the equivalent of his knowledgeable consent." Docket No. 5566, Order of 1/6/95 at 101. Consequently, we mandated rate caps for operator services, set at the rates charged by New England Telephone and Telegraph Company, now known as Verizon New England Inc. d/b/a Verizon Vermont ("Verizon"). No reseller may authorize or bill surcharges not set out in Verizon's tariff. We limited this requirement, however, as follows: "(1) the rate cap shall apply to calls (except dial-around calls) made from aggregator and other transient locations; (2) the rate cap shall not apply to calls from those locations where the subscriber selecting the presubscribed OSP carrier is also the person or entity who will be paying the bill; and (3) the rate cap will not apply to dial-around calls, which involve services selected by the caller and outside the control of the presubscribed AOS provider." *Id.*

Additionally, GECTS should be aware of the Board's policy in connection with provision of prepaid calling card service. The Board has imposed such a requirement on new entrants into the

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5. *In the Matter of Classic Telephone, Inc.*, Memorandum Opinion and Order, FCC CCBPol 96-10 at paragraph 28 (October 1, 1996).

Vermont market that provide debit prepaid calling card services. *See* C.P.G. No. 145, Order of 7/13/94, and C.P.G. No. 146, Order of 8/17/94. As we noted in our Orders in C.P.G. Nos. 145 and 146, the public utilities commissions of several states have expressed concern about the potential risks to consumers associated with payment in advance of receipt of service, and we have the same concern.<sup>6</sup> Consequently, we ordered World Telecom Group and Quest Telecommunications Inc. to post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues for the first 12 months of operation. We also stated that we would examine the issue of whether this requirement should be instituted on an industry-wide basis in our informal rulemaking proceeding.

We make a distinction, however, between new entrants into the Vermont market that provide only debit card service, and long-term participants that offer a multitude of services and that simply seek to add debit card service to their choice of service offerings. For this latter group, we do not impose a bond requirement, on the theory that the provider is already established in Vermont, offers several services that are provided on an on-going basis, and would be unlikely to "take the money and run."

Since we do not know how much of its business will be devoted to prepaid calling card services, we conclude that the most sensible approach is to inform GECTS that should it decide to include the provision of debit cards among its service offerings, it will be required to post a bond, payable to the Board, in an amount equal to its projected Vermont intrastate revenues from its prepaid calling card services, for the first 12 months of operation. This approach will be fair to GECTS, fair to the public, and consistent with the theory that underlies the Board's treatment of other telecommunications providers offering debit card services.

The Board finds the reasons articulated by GECCS in support of revocation of its CPG to be convincing. A particularly convincing reason is that GECCS will cease to exist following the merger transaction described above. This finding, together with the fact that no opposition to GECCS's filing has been registered with the Board, leads us to conclude that GECCS's CPG should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require an opportunity for hearing before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where

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6. In this regard, we note that the DPS has asked several other prospective providers of debit cards to comply with more than 30 separate suggested requirements designed to protect consumers. *See, e.g.,* C.P.G. #156, Petition of IDB WorldCom Services, Inc., Letter from DPS to IDB WorldCom Services, Inc. dated May 26, 1994. In its letter to IDB WorldCom, the DPS states that its suggested requirements are "merely a guideline to certain consumer protection concerns" and are not required by the Public Service Board. *Id.* at 3. We confirm that we have not endorsed the requirements suggested by the DPS. However, we will review the DPS' proposed requirements and, if appropriate, may consider including some of them in our draft rules.

no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, will revoke the CPG without a hearing.

For all of the above reasons, the merger of GECCS with and into GECTS and related transactions discussed above, should be approved.

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The merger of GE Capital Communications Services Corporation ("GECCS") with and into GE Capital Telemanagement Services Corporation ("GECTS") is approved.

2. A Certificate of Consent to the merger of GECCS with and into GECTS shall be issued.

3. The transfer of control of GECCS to GECTS will promote the public good and, therefore, is approved.

4. The ownership and operation of a telecommunications service by GECTS will promote the general good of the State, subject to the conditions in the attached Certificate of Public Good issued to GECTS.

5. Prior to offering telecommunications service in Vermont, GECTS shall file a tariff, identical to that of GECCS, for intrastate service. Such tariff shall become effective forty-five days from the date of filing, absent further order by the Board or appropriate motions by the Department of Public Service or affected parties.

6. If GECTS at any time in the future proposes to offer operator services, it shall be required to comply with the Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Alternative Operator Services in Vermont, and any future orders in that docket.

7. If GECTS intends to offer prepaid calling card services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling card service for the first twelve (12) months of operation.

8. If GECTS intends to do business in the State of Vermont under any name other than the name in use on the date of the Order in this Docket, it shall file a notice of the new trade name with the Clerk of the Board and the Department of Public Service at least fifteen days before commencing business under the new trade name.<sup>7</sup>

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7. For a corporate name change, see 11 V.S.A. § 4.01 and 30 V.S.A. § 231. Petitioners may wish to contact the Clerk of the Board for assistance.

9. Petitioners shall file written notification to the Board within one week of the final merger closing.

10. The Certificate of Public Good issued to GECCS on June 15, 1994, is hereby revoked, effective upon the completion of the merger between GECCS and GECTS.

DATED at Montpelier, Vermont, this 19<sup>th</sup> day of June, 2001.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

Filed: June 19, 2001

Attest: s/Susan M. Hudson  
Clerk of the Board

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*